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TOPCON MEDICAL SYSTEMS, INC. and
TOPCON HEALTHCARE SOLUTIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND COURTHOUSE

CARL ZEISS MEDITEC, INC.,

Plaintiff,

vs.

TOPCON MEDICAL SYSTEMS, INC.,
TOPCON HEALTHCARE SOLUTIONS,
INC., TOBIAS KURZKE, GREG
HOFFMEYER, GENEVIEVE FAY,
KATALIN SPENCER, TERRY KEITH
BROCK, CHARLES GUIBORD, JR.,
JOSEPH CICCANESE, AND MICHAEL
CHEN,

Defendants.

Case No. 4:19-cv-04162-SBA (LB)

**DEFENDANT TOPCON MEDICAL
SYSTEMS, INC. AND TOPCON
HEALTHCARE SOLUTION INC.'S ANSWER
TO PLAINTIFF CARL ZEISS MEDITEC,
INC.'S THIRD AMENDED COMPLAINT
FOR TRADE SECRET APPROPRIATION,
AND BREACH OF CONTRACT**

TAC Filed: April 3, 2020
SAC Filed: January 6, 2020
FAC Filed: November 27, 2019
Compl. Filed: July 19, 2019
Trial Date: April 26, 2021

CASE NO. 4:19-CV-04162-SBA (LB)

DEFENDANT TOPCON MEDICAL SYSTEMS, INC. AND TOPCON HEALTHCARE SOLUTION INC.'S
ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Defendants TOPCON MEDICAL SYSTEMS, INC. and TOPCON HEALTHCARE SOLUTIONS, INC. (collectively referred to as “Defendants” or “Topcon”), by and through their undersigned counsel, respectfully submits the following Answer and Affirmative Defenses to the Third Amended Complaint (“TAC”) of Plaintiff CARL ZEISS MEDITEC, INC. (“Plaintiff” or “Zeiss” or “CZMI”) in the above-captioned matter.

PRELIMINARY STATEMENT

Topcon’s Answer and Affirmative Defenses are based upon its investigation to date, which is ongoing, and Topcon reserves the right to supplement, clarify, or amend its Answer and Affirmative Defenses during the course of litigation, as additional information becomes available and as the investigation continues. For the sake of clarity and avoidance of doubt, to the extent an allegation in the TAC is not expressly admitted, Topcon denies each and every such allegation. Relatedly, many of the TAC’s allegations state legal conclusions that do not require a response or purport to characterize or selectively quote from documents out of context. To the extent responses are required to any such allegations, Topcon denies all such allegations. Topcon further denies any allegations contained in, or references that may be drawn from, the captions contained in the TAC, or any other portion of the TAC outside of its numbered paragraphs. Additionally, Topcon asserts that this action is without merit and that no relief is warranted.

Finally, much of the TAC has been filed under seal, and therefore Topcon has been unable to evaluate those portions of the TAC to determine the truth or falsehood of any of those statements alleged. To the extent a response is required to those allegations of the TAC that were filed under seal, Topcon denies those allegations because Topcon is without sufficient knowledge or information to form a belief regarding the truth of those allegations.

In response to each of the numbered paragraphs of the TAC, Topcon respectfully responds as follows:

I. INTRODUCTION

1. Paragraph 1 states legal conclusions to which no response is required. To the extent a response is required, Topcon lacks knowledge or information sufficient to form a belief about why CZMI brings this action, and on that basis, denies those allegations. Topcon lacks

1 sufficient knowledge or information to form a belief about allegations against the other
2 Defendants, and on that basis, denies those allegations.

3 2. Topcon admits that in early 2018, it started a software division to develop software
4 products, Topcon Healthcare Solutions. Except as expressly admitted, Topcon lacks sufficient
5 knowledge or information to form a belief as to the rest of the allegations of Paragraph 2, and, on
6 that basis, denies the rest of the allegations.

7 3. Topcon denies that Tobias Kurzke is the Director of Product Management for
8 Topcon Healthcare Solutions. Topcon lacks sufficient knowledge or information to form a belief
9 as to the rest of the allegations of Paragraph 3, and, on that basis, denies the rest of the allegations.

10 4. Paragraph 4 states legal contentions to which no response is required. To the
11 extent a response is required, Topcon lacks sufficient information to form a belief as to the
12 allegations asserted in Paragraph 4, and, on that basis, denies the allegations.

13 5. Paragraph 5 states legal contentions to which no response is required. To the
14 extent a response is required, Topcon denies each and every allegation contained in Paragraph 5.

15 6. Paragraph 6 states legal contentions to which no response is required. Topcon
16 admits that the Third Amended Complaint superseded Topcon's Answer to the Second Amended
17 Complaint. Paragraph 6 contains allegations that were filed under seal and cites Exhibits 2 and 3
18 that were filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient
19 information to form a belief as to the allegations asserted in Paragraph 6, and, on that basis, denies
20 the allegations.

21 7. Paragraph 7 contains allegations that were filed under seal and cites Exhibit 2 that
22 was filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient
23 information to form a belief as to the allegations asserted in Paragraph 7, and, on that basis, denies
24 the allegations.

25 8. Paragraph 8 contains allegations that were filed under seal and cites Exhibit 3 that
26 was filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient
27 information to form a belief as to the allegations asserted in Paragraph 8, and, on that basis, denies
28 the allegations.

1 9. Paragraph 9 contains allegations that were filed under seal and cites Exhibit 3 that
2 was filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient
3 information to form a belief as to the allegations asserted in Paragraph 9, and, on that basis, denies
4 the allegations.

5 10. Topcon admits that it develops products that compete with products produced by
6 CZMI. Topcon denies using any CZMI trade secrets or confidential information in the
7 development of its products. Unless admitted, Topcon denies the allegations of Paragraph 10.

8 11. Paragraph 11 states legal contentions to which no response is required. Also,
9 Paragraph 11 contains allegations relating to Exhibit 3 that was filed under seal by CZMI. To the
10 extent a response is required, Topcon admits: that Glaucoma Module is a Topcon product that
11 will compete with CZMI's Glaucoma Workplace; that Mr. Kurzke is the Topcon Product
12 Manager for Glaucoma Module; Mr. Kurzke previously served as Product Manager for CZMI's
13 Glaucoma Workplace, but was not the Product Manager for Glaucoma Workplace in the last two
14 years of his employment at CZMI. Topcon denies that its development of Glaucoma Module or
15 any Topcon product would not be possible but for the misappropriation and misuse of alleged
16 CZMI trade secrets and confidential information. Except as expressly admitted, Topcon lacks
17 sufficient information to form a belief as to the allegations asserted in Paragraph 11, and, on that
18 basis, denies the allegations.

19 12. Paragraph 12 states legal contentions to which no response is required. Also,
20 Paragraph 12 contains allegations that were filed under seal and cite Exhibit 2 that was filed under
21 seal by CZMI. To the extent a response is required, Topcon lacks sufficient information to form
22 a belief as to the allegations asserted in Paragraph 12, and, on that basis, denies the allegations.

23 13. Paragraph 13 states legal contentions to which no response is required. Also,
24 Paragraph 13 contains allegations that were filed under seal by CZMI. To the extent a response
25 is required, Topcon admits that Mr. Kurzke was an inventor on the '251 Patent. Except as
26 expressly admitted, Topcon lacks sufficient information to form a belief as to the allegations
27 asserted in Paragraph 13, and, on that basis, denies the allegations.

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1 14. Topcon denies the allegations in Paragraph 14.

2 15. Paragraph 15 states legal contentions to which no response is required. Paragraph
3 15 also contains an allegation that was filed under seal by CZMI. To the extent a response is
4 required, Topcon admits that it plans to release a product named Glaucoma Module. Except as
5 expressly admitted, Topcon denies each and every remaining allegation contained in Paragraph
6 15 as to Topcon.

7 16. Topcon admits that CZMI sent a cease and desist letter in March 2019. Except as
8 expressly admitted, Topcon denies each and every remaining allegation contained in
9 Paragraph 16.

10 **II. PARTIES**

11 17. Topcon lacks sufficient knowledge or information to form a belief as to the truth
12 of the allegations in Paragraph 17, and, on that basis, denies the allegations.

13 18. As to Paragraph 18, CZMI and Topcon entered into a joint stipulation on March
14 25, 2020 that dismissed Topcon Corporation as a defendant. (Dkt. No. 183.) Accordingly, a
15 response to Paragraph 18 is not required. To the extent a response is required, Topcon admits
16 that Topcon Corporation is incorporated under the laws of Japan and has its principal place of
17 business in Tokyo, Japan.

18 19. Topcon admits that Topcon Medical Systems is incorporated under the laws of the
19 State of New York and has its principal place of business at 111 Bauer Drive, Oakland, New
20 Jersey. Topcon admits that Mr. Kurzke performs work in this District. Topcon denies that
21 Mr. Hoffmeyer works within this District. Topcon denies that Ms. Fay performs work in this
22 District as she is no longer an employee of Topcon. Topcon denies that Ms. Spencer performs
23 work in this District. Topcon admits that Mr. Brock performs work in this District. Topcon denies
24 that Mr. Guibord performs work in this District. Topcon denies that Mr. Ciccanesi performs work
25 in this District. Topcon admits that Dr. Chen performs work in this District. Except as expressly
26 admitted, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the
27 rest of allegations in Paragraph 19, and, on that basis, denies the rest of the allegations.

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20. Topcon admits that Topcon Healthcare Solutions is incorporated under the laws of the State of New York and has its principal place of business at 111 Bauer Drive, Oakland, New Jersey. Topcon admits that Mr. Kurzke performs work in this District. Topcon denies that Mr. Hoffmeyer works within this District. Topcon denies that Ms. Fay performs work in this District as she is no longer an employee of Topcon. Topcon denies that Ms. Spencer performs work in this District. Topcon admits that Mr. Brock performs work in this District. Topcon denies that Mr. Guibord performs work in this District. Topcon denies that Mr. Ciccanesi performs work in this District. Topcon admits that Dr. Chen performs work in this District. Except as expressly admitted, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the rest of allegations in Paragraph 2-0, and, on that basis, denies the rest of the allegations.

21. Topcon admits the allegations of Paragraph 21.

22. Topcon admits that Tobias Kurzke is the Director of Product Management for Topcon Healthcare Solutions and resides in Pleasanton, California.

23. Topcon admits that Greg Hoffmeyer works for Topcon Medical Solutions as the Director of OCT Clinical Sales and resides in Chapel Hill, North Carolina.

24. Topcon denies that Genevieve Fay currently works for Topcon Medical Systems, Inc. as the Senior Director of Global Marketing. Topcon denies that Ms. Fay lives in Dublin, California.

25. Topcon denies that Katalin Spencer is a Trade Show Manager for Topcon Healthcare Solutions, Inc. . Topcon denies that Ms. Spencer resides in Reno, Nevada.

26. Topcon admits that Terry Keith Brock works as a Senior Director of Product Management for Topcon Medical Systems, Inc. Topcon denies that Mr. Brock lives in Oakland, California.

27. Topcon admits that Charles Guibord, Jr. works for Topcon Medical Systems as a clinical sales manager and resides in Newbury Park, California.

28. Topcon admits that Joseph Ciccanesi works for Topcon Medical Systems, Inc. as a director of clinical sales, and resides in Stratham, New Hampshire.

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29. Topcon admits that Michael Chen works for Topcon Medical Systems, Inc. as a global upstream product manager. Topcon denies that Mr. Chen resides in Berkeley, California.

III. JURISDICTION AND VENUE

30. Paragraph 30 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient information or knowledge to form a belief as to the truth of the allegations asserted in Paragraph 30, and, on that basis, denies the allegations.

31. Paragraph 31 states legal contentions to which no response is required. To the extent a response is required, Topcon admits that three of the eight individual defendants work for Topcon within this District. Topcon lacks sufficient information or knowledge to form a belief as to the truth of the rest of the allegations asserted in Paragraph 31, and, on that basis, denies the rest of the allegations.

32. Paragraph 32 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient information or knowledge to form a belief as to the truth of the allegations asserted in Paragraph 32, and, on that basis, denies the allegations.

IV. FACTUAL ALLEGATIONS

A. CZMI'S Leadership of the Ophthalmic Diagnostics Industry

33. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33, and, on that basis, denies the allegations.

34. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34, and, on that basis, denies the allegations.

35. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 35, and, on that basis, denies the allegations.

36. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 36, and, on that basis, denies the allegations.

37. Topcon admits that any organization which wishes to compete in the industry must significantly invest in ODx, given the significant costs. Topcon admits that it and CZMI are part of large, multinational corporations that specialize in the ophthalmic industry. Topcon lacks sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 39 pertaining

1 to the industry closely watching each other and the commercialization of various technologies.
2 Topcon lacks sufficient information to form a belief as to the remaining allegations contained in
3 Paragraph 37, and, on that basis, denies the allegations.

4 38. Topcon lacks sufficient knowledge or information to form a belief as to the truth
5 of the allegations in Paragraph 38, and, on that basis, denies the allegations.

6 39. Topcon lacks sufficient knowledge or information to form a belief as to the truth
7 of the allegations in Paragraph 39, and, on that basis, denies the allegations.

8 40. Topcon lacks sufficient knowledge or information to form a belief as to the truth
9 of the allegations in Paragraph 40, and, on that basis, denies the allegations.

10 **B. The CZMI ODx Products**

11 41. Topcon admits that FORUM is one of CZMI's products. Except as expressly
12 admitted, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the
13 remaining allegations in Paragraph 41, and, on that basis, denies the remaining allegations.

14 42. Topcon lacks sufficient knowledge or information to form a belief as to the truth
15 of the allegations in Paragraph 42, and, on that basis, denies the allegations.

16 43. Topcon admits that Glaucoma Workplace is one of CZMI's products. Except as
17 expressly admitted, Topcon lacks sufficient knowledge or information to form a belief as to the
18 truth of the remaining allegations in Paragraph 43, and, on that basis, denies the remaining
19 allegations.

20 44. Topcon lacks sufficient knowledge or information to form a belief as to the truth
21 of the allegations in Paragraph 44, and, on that basis, denies the allegations.

22 45. Topcon admits that commercializing a product requires significant software
23 development, regulatory approval, testing, marketing and sales, and related documentation in
24 support of those activities. Except as expressly admitted, Topcon lacks sufficient knowledge or
25 information to form a belief as to the truth of the remaining allegations in Paragraph 45, and, on
26 that basis, denies the remaining allegations.

27 46. Paragraph 46 contains allegations that were filed under seal by CZMI, and
28 allegations relating to Exhibit 11 that was filed under seal by CZMI. To the extent a response is

1 required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in
2 Paragraph 46, and, on that basis, denies the allegations.

3 47. Paragraph 47 contains allegations relating to Exhibit 11 that was filed under seal
4 by CZMI. To the extent a response is required, Topcon lacks sufficient information to form a
5 belief as to the truth of the allegations in Paragraph 47, and, on that basis, denies the allegations.

6 48. Paragraph 48 contains allegations that were filed under seal by CZMI, and
7 allegations relating to Exhibit 3 that was filed under seal by CZMI. To the extent a response is
8 required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in
9 Paragraph 48, and, on that basis, denies the allegations.

10 49. Paragraph 49 contains allegations that were filed under seal by CZMI, and
11 allegations relating to Exhibits 2 and 3 that were filed under seal by CZMI. To the extent a
12 response is required, Topcon lacks sufficient information to form a belief as to the truth of the
13 allegations in Paragraph 49, and, on that basis, denies the allegations.

14 50. Paragraph 50 contains allegations that were filed under seal by CZMI, and
15 allegations relating to Exhibit 12 that was filed under seal by CZMI. To the extent a response is
16 required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in
17 Paragraph 50, and, on that basis, denies the allegations.

18 51. Paragraph 51 contains allegations that were filed under seal by CZMI, and
19 allegations relating to Exhibits 11 through 19 that were filed under seal by CZMI. To the extent
20 a response is required, Topcon lacks sufficient information to form a belief as to the truth of the
21 allegations in Paragraph 51, and, on that basis, denies the allegations.

22 52. Paragraph 52 contains allegations that were filed under seal by CZMI, and
23 allegations relating to documents that were filed under seal by CZMI. To the extent a response
24 is required, Topcon lacks sufficient information to form a belief as to the truth of the allegations
25 in Paragraph 52, and, on that basis, denies the allegations.

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C. The Alleged CZMI TRADE SECRETS, the Alleged CZMI Confidential Information, and the '251 Patent

53. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53, and, on that basis, denies the allegations.

54. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54, and, on that basis, denies the allegations.

55. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55, and, on that basis, denies the allegations.

56. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56, and, on that basis, denies the allegations.

57. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 57, and, on that basis, denies the allegations.

58. Topcon admits that Mr. Kurzke was a CZMI Product Manager for Glaucoma Workplace, but was not the Product Manager for Glaucoma Workplace, during the last two years of his employment at CZMI. Unless expressly admitted, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 58, and, on that basis, denies the allegations.

59. Topcon admits Mr. Kurzke previously worked as a Software Program Manager for three years and System Integration Manager for two years for CZMI Germany. Topcon denies the remaining allegations contained in Paragraph 59.

60. Topcon denies Mr. Kurzke worked closely with sales or clinical research while working as a Product Manager for CZMI. Topcon denies Mr. Kurzke had sole global responsibility for market introduction of Glaucoma Workplace and Retina Workplace. Topcon admits the remaining allegations contained in Paragraph 60.

61. Topcon denies that “All of the Former Employees also had roles for the CZMI ODx Products that included Glaucoma Workplace and Retina Workplace.” Topcon lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 61, and, on that basis, denies the allegations.

1 62. Topcon admits Mr. Hoffmeyer's role at CZMI related to OCT and that
2 Mr. Brock's and Mr. Chen's roles at CZMI related in part to fundus imaging. Topcon denies
3 Mr. Brock or Mr. Chen had sales or technical roles at CZMI. Topcon lacks sufficient knowledge
4 or information to form a belief as to the truth of the remaining allegations in Paragraph 62, and,
5 on that basis, denies the remaining allegations.

6 63. Topcon denies Mr. Ciccanesi's role at CZMI between 2017 and the time he
7 resigned related to ODx Products. Topcon admits Mr. Guibord was part of CZMI's sales team
8 and his role related to ODx Products. Topcon denies Ms. Fay had "global responsibility for the
9 CZMI ODx Products." Topcon admits Ms. Spencer worked as a Trade Show Coordinator at
10 CZMI. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the
11 remaining allegations in Paragraph 63, and, on that basis, denies the remaining allegations.

12 64. Topcon denies the allegations in Paragraph 64.

13 65. Paragraph 65 contains allegations that were filed under seal by CZMI, and
14 allegations relating to Exhibit 1 that was filed under seal by CZMI. To the extent a response is
15 required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the
16 allegations in Paragraph 65, and, on that basis, denies the allegations.

17 66. Topcon lacks sufficient knowledge or information to form a belief as to the truth
18 of the allegations in Paragraph 66, and, on that basis, denies the allegations.

19 67. Paragraph 67 contains allegations that were filed under seal by CZMI, and
20 allegations relating to Exhibit 1 that was filed under seal by CZMI. To the extent a response is
21 required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in
22 Paragraph 67, and, on that basis, denies the allegations.

23 68. Paragraph 68 states legal contentions to which no response is required. Also,
24 Paragraph 68 contains allegations that were filed under seal by CZMI, and allegations relating to
25 Exhibit 1, Exhibit 3 and Exhibits 20 through 26 that were filed under seal by CZMI. To the extent
26 a response is required, Topcon lacks sufficient information to form a belief as to the truth of the
27 allegations in Paragraph 68, and, on that basis, denies the allegations.

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69. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69, and, on that basis, denies the allegations.

70. Paragraph 70 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 70, and, on that basis, denies the allegations.

71. Paragraph 71 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 71, and, on that basis, denies the allegations.

72. Paragraph 72 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 72, and, on that basis, denies the allegations.

73. Paragraph 73 states legal contentions to which no response is required. Also, Paragraph 73 contains allegations relating to Exhibit 1 that was filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 73, and, on that basis, denies the allegations.

74. Paragraph 74 contains allegations relating to Exhibit 1 and Exhibits 20 through 26 that were filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 74, and, on that basis, denies the allegations.

75. Paragraph 75 contains allegations relating to Exhibits 1 and 2 that were filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 75, and, on that basis, denies the allegations.

76. Paragraph 74 contains allegations relating to Exhibits 1, 3, and 20 through 26 that were filed under seal by CZMI. To the extent a response is required, Topcon lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 74, and, on that basis, denies the allegations.

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1 77. Topcon lacks sufficient knowledge or information to form a belief as to the truth
2 of the allegations asserted in Paragraph 77 because the allegations relate to Exhibits 1, 20, 21, 22,
3 23, 24, 25, and 26 that were filed under seal, and, on that basis, denies the allegations.

4 78. Paragraph 78 states legal contentions to which no response is required. Paragraph
5 78 was partially filed under seal, and contains allegations relating to Exhibits 2 and 3 that were
6 filed under seal by CZMI. Therefore, Topcon lacks sufficient information to form a belief as to
7 the allegations asserted in Paragraph 78, and, on that basis, denies the allegations.

8 79. Topcon lacks sufficient information or knowledge to form a belief as to the truth
9 of the allegations in Paragraph 79, and, on that basis, denies the allegations.

10 **D. Defendants Did Not Misappropriate CZMI Trade Secrets or Confidential**
11 **Information**

12 80. Topcon lacks sufficient information or knowledge to form a belief as to the truth
13 of the allegations in Paragraph 80, and, on that basis, denies the allegations.

14 81. Topcon admits that the Former Employees signed agreements related to their
15 employment with CZMI. Topcon lacks sufficient information or knowledge to form a belief as
16 to the truth of the remaining allegations in Paragraph 81 because the allegations relate to Exhibits
17 12 through 19 that were filed under seal, and, on that basis, denies the allegations.

18 82. Paragraph 82 states legal contentions to which no response is required. To the
19 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
20 as to the allegations asserted in Paragraph 82 because the allegations were filed under seal or
21 relate to exhibits that were filed under seal, and, on that basis, denies the allegations.

22 83. Topcon lacks sufficient knowledge or information to form a belief as to the truth
23 of the allegations in Paragraph 83, and, on that basis, denies the allegations.

24 84. Topcon denies each and every allegation contained in Paragraph 84.

25 85. Topcon admits that when Mr. Kurzke joined Topcon, he was assigned as Product
26 Manager for Topcon's Glaucoma Module software; and Topcon co-presented a poster at the
27 World Glaucoma Congress that had mock-ups for a product concept, which was eventually
28 implemented in Glaucoma Module. Topcon lacks sufficient knowledge or information to form a

1 belief as to the allegations asserted in Paragraph 85 because the allegations were filed under seal,
2 relate to allegations that were filed under seal or relate to Exhibit 3 that was filed under seal, and,
3 on that basis, denies the allegations.

4 86. Topcon lacks sufficient knowledge or information to form a belief as to the
5 allegations asserted in Paragraph 86 because the allegations were filed under seal and relate to
6 Exhibit 3 that was filed under seal, and, on that basis, denies the allegations.

7 87. Paragraph 87 states legal contentions to which no response is required. To the
8 extent a response is required, Topcon denies each and every allegation contained in Paragraph 87.

9 88. Paragraph 88 states legal contentions to which no response is required. To the
10 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
11 as to the allegations asserted in Paragraph 88 because the allegations were filed under seal, relate
12 to allegations that were filed under seal, or relate to Exhibit 27 that was filed under seal, and, on
13 that basis, denies the allegations.

14 89. Paragraph 89 states legal contentions to which no response is required. To the
15 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
16 as to the allegations asserted in Paragraph 89 because the allegations relate to Exhibits 1, 2, and
17 28 through 34 that were filed under seal, and, on that basis, denies the allegations.

18 90. Paragraph 90 states legal contentions to which no response is required. To the
19 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
20 as to the allegations asserted in Paragraph 90 because the allegations were filed under seal, relate
21 to allegations that were filed under seal, or relate to Exhibits 2, 3, 12, and 27 that were filed under
22 seal, and, on that basis, denies the allegations.

23 91. Paragraph 91 states legal contentions to which no response is required. To the
24 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
25 as to the allegations asserted in Paragraph 91 because the allegations were filed under seal or
26 relate to allegations that were filed under seal, and, on that basis, denies the allegations.

27 92. Topcon lacks sufficient knowledge or information to form a belief as to the
28 allegations asserted in Paragraph 92 because the allegations were filed under seal, and, on that

1 basis, denies the allegations.

2 93. Topcon lacks sufficient knowledge or information to form a belief as to the
3 allegations asserted in Paragraph 93 because the allegations were filed under seal, and, on that
4 basis, denies the allegations.

5 94. Paragraph 94 contains allegations that were filed under seal by CZMI. To the
6 extent a response is required, Topcon admits that a poster referred to as an “Abstract” was
7 submitted but specifically denies that Mr. Kurzke submitted the poster himself or was the sole
8 author of the poster and abstract. Except as expressly admitted, Topcon denies the remaining
9 allegations contained in Paragraph 94.

10 95. Paragraph 95 states legal contentions to which no response is required. To the
11 extent a response is required, Topcon denies that any Topcon documents filed with the Third
12 Amended Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
13 allegations, Topcon lacks sufficient knowledge or information to form a belief as to the
14 allegations asserted in Paragraph 95 because the allegations were filed under seal, relate to
15 allegations that were filed under seal, or relate to Exhibits 1, and 29 through 34 that were filed
16 under seal, and, on that basis, denies the allegations.

17 96. Topcon admits that the Abstract shown in Exhibit 29 disclosed screenshots of aa
18 product Topcon now calls “Glaucoma Module.” Topcon admits the allegation of Paragraph 96
19 that Tobias Kurzke was a co-author of the Abstract, which claims to present “a strategy for clinical
20 testing information management specifically designed for the [glaucoma suspects].” Except as
21 expressly admitted, Topcon denies the remaining allegations contained in Paragraph 96.

22 97. Topcon admits that the Abstract shown in Exhibit 29 makes the statements alleged
23 in Paragraph 97. Except as expressly admitted, Topcon denies the remaining allegations
24 contained in Paragraph 97.

25 98. Topcon admits that the Abstract shown in Exhibit 29 makes the statements alleged
26 in Paragraph 98. Except as expressly admitted, Topcon denies the remaining allegations
27 contained in Paragraph 98.

28 99. Paragraph 99 states legal contentions to which no response is required. To the

1 extent a response is required, Topcon denies that the Abstract evidences any misappropriation of
2 CZMI trade secrets. Further, Paragraph 99 contains allegations relating to Exhibit 1 that was filed
3 under seal by CZMI. As for the remaining allegations in this paragraph, Topcon lacks sufficient
4 information to form a belief as to the allegations asserted in Paragraph 99, and, on that basis,
5 denies the allegations.

6 100. Paragraph 100 states legal contentions to which no response is required. To the
7 extent a response is required, Topcon denies that the Abstract evidences any misappropriation of
8 CZMI trade secrets. Further, Paragraph 100 contains allegations relating to Exhibit 1 that was
9 filed under seal by CZMI. As for the remaining allegations in this paragraph,, Topcon lacks
10 sufficient information to form a belief as to the allegations asserted in Paragraph 100, and, on that
11 basis, denies the allegations.

12 101. Paragraph 101 states legal contentions to which no response is required. To the
13 extent a response is required, Topcon admits that Mr. Kurzke was a CZMI employee; was the
14 Product Manager for Glaucoma Workplace, but was not Product Manager for Glaucoma
15 Workplace in the last two years of his CZMI employment; and is listed an inventor on the '251
16 patent. Further, Paragraph 101 contains allegations relating to Exhibits 1 and 2 that were filed
17 under seal by CZMI. As for the remaining allegations in this paragraph,, Topcon lacks sufficient
18 information to form a belief as to the allegations asserted in Paragraph 101, and, on that basis,
19 denies the allegations.

20 102. Paragraph 102 states legal contentions to which no response is required. To the
21 extent a response is required, Topcon denies that any Topcon documents filed with the Third
22 Amended Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
23 allegations, Paragraph 102 was partially filed under seal, and contains allegations relating to
24 Exhibits 1 and 30 that were filed under seal by CZMI. Therefore, Topcon lacks sufficient
25 information to form a belief as to the allegations asserted in Paragraph 102, and, on that basis,
26 denies the allegations.

27 103. Paragraph 103 states legal contentions to which no response is required. To the
28 extent a response is required, Topcon denies that any Topcon documents filed with the Third

1 Amended Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
2 allegations, Paragraph 103 was partially filed under seal, and contains allegations relating to
3 Exhibits 2 and 31 that were filed under seal by CZMI. Therefore, Topcon lacks sufficient
4 information to form a belief as to the allegations asserted in Paragraph 103, and, on that basis,
5 denies the allegations.

6 104. Paragraph 104 states legal contentions to which no response is required. To the
7 extent a response is required, Topcon denies that any Topcon documents filed with the Third
8 Amended Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
9 allegations, Paragraph 104 was partially filed under seal by CZMI, and contains direct references
10 to Exhibits 1, 31, and 32 that were also filed under seal. Therefore, Topcon lacks sufficient
11 information to form a belief as to the allegations asserted in Paragraph 104, and, on that basis,
12 denies the allegations.

13 105. Topcon denies that any Topcon documents filed with the Third Amended
14 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
15 allegations, Topcon lacks sufficient information to form a belief as to the allegations asserted in
16 Paragraph 105 because the allegations were filed under seal, and, on that basis, denies the
17 allegations.

18 106. Topcon denies that any Topcon documents filed with the Third Amended
19 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
20 allegations, Topcon lacks sufficient information to form a belief as to the allegations asserted in
21 Paragraph 106 because the allegations were filed under seal, and, on that basis, denies the
22 allegations.

23 107. Topcon denies that any Topcon documents filed with the Third Amended
24 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
25 allegations, Topcon lacks sufficient information to form a belief as to the allegations asserted in
26 Paragraph 107 because the allegations were filed under seal, and, on that basis, denies the
27 allegations.

28 108. Topcon denies that any Topcon documents filed with the Third Amended

1 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
2 allegations, Topcon lacks sufficient information to form a belief as to the allegations asserted in
3 Paragraph 108 because the allegations were filed under seal, and, on that basis, denies the
4 allegations.

5 109. Topcon denies that any Topcon documents filed with the Third Amended
6 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
7 allegations, Paragraph 109 contains allegations relating to Exhibit 33 that was filed under seal by
8 CZMI. To the extent a response is required, Topcon lacks sufficient information to form a belief
9 as to the truth of the allegations asserted in Paragraph 109, and, on that basis, denies the
10 allegations.

11 110. Paragraph 110 states legal contentions to which no response is required. To the
12 extent a response is required, Topcon denies that any Topcon documents filed with the Third
13 Amended Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
14 allegations, Paragraph 110 contains allegations relating to Exhibit 1 that was filed under seal by
15 CZMI. Therefore, Topcon lacks sufficient information to form a belief as to the allegations
16 asserted in Paragraph 110, and, on that basis, denies the allegations.

17 111. Paragraph 111 states legal contentions to which no response is required. To the
18 extent a response is required, Topcon admits that it plans to release a product called “Glaucoma
19 Module” in the next few months pending final regulatory approval from the Food and Drug
20 Administration. Moreover, to the extent a response is required, Paragraph 111 contains
21 allegations relating to Exhibit 1 that was filed under seal by CZMI. Therefore, Topcon lacks
22 sufficient information to form a belief as to the truth of the allegations asserted in Paragraph 111,
23 and, on that basis, denies the allegations.

24 112. Topcon denies each and every allegation contained in Paragraph 112.

25 113. Topcon lacks sufficient information to form a belief as to the allegations asserted
26 in Paragraph 113 because the allegations were filed under seal, and, on that basis, denies the
27 allegations.

28 114. Topcon lacks sufficient information to form a belief as to the allegations asserted

1 in Paragraph 114 because the allegations were filed under seal, and, on that basis, denies the
2 allegations.

3 115. Paragraph 115 states legal contentions to which no response is required. To the
4 extent a response is required, Topcon denies each and every allegation contained in Paragraph
5 115.

6 116. Paragraph 116 states legal contentions to which no response is required. To the
7 extent a response is required, Topcon admits that in 2012, the District of Massachusetts issued an
8 injunction and eventual consent judgment against Topcon and one of its employees. Except as
9 expressly admitted, Topcon denies each and every remaining allegation contained in Paragraph
10 116.

11 117. Paragraph 117 states legal contentions to which no response is required. To the
12 extent a response is required, Topcon denies each and every allegation contained in Paragraph
13 117.

14 118. Paragraph 118 states legal contentions to which no response is required. To the
15 extent a response is required, Topcon denies each and every allegation contained in Paragraph
16 118.

17 **E. Defendants Did Not Misappropriate Any CZMI TRADE SECRETS and**
18 **CZMI Confidential Information**

19 119. Topcon denies each and every allegation contained in Paragraph 119.

20 120. Topcon lacks sufficient knowledge or information to form a belief as to the
21 allegations asserted in Paragraph 120, and, on that basis, denies the allegations.

22 121. Topcon admits that it started around February 2018, and Topcon admits that
23 Topcon Healthcare Solutions has approximately 86 employees in the United States and
24 approximately 34 employees in Finland. Topcon admits that the Abstract submitted by Topcon
25 shown in Exhibit 29 and directly referenced in Paragraph 121 states, “[t]his poster demonstrates
26 a strategy for clinical testing information management specifically designed for the GS. The
27 proposed analysis and presentation guide the clinician in identifying the earliest evidence of
28 change and the confirmatory presence of a structure function correlation.” Unless expressly

1 admitted, Topcon denies the remaining allegations in Paragraph 121.

2 122. Paragraph 122 states legal contentions to which no response is required. To the
3 extent a response is required, Topcon denies each and every allegation contained in Paragraph
4 122.

5 123. Paragraph 123 states legal contentions to which no response is required. To the
6 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
7 as to the allegations asserted in Paragraph 123 because the allegations were filed under seal or
8 relate to allegations that were filed under seal, and, on that basis, denies the allegations. Topcon
9 denies each and every remaining allegation in Paragraph 123.

10 124. Topcon lacks sufficient knowledge or information to form a belief as to the
11 allegations asserted in Paragraph 124 because the allegations relate to Exhibit 1 that was filed
12 under seal, and, on that basis, denies the allegations. Topcon denies each and every remaining
13 allegation contained in Paragraph 124.

14 125. Topcon lacks sufficient knowledge or information to form a belief as to the
15 allegations asserted in Paragraph 125 because the allegations were filed under seal or relate to
16 allegations that were filed under seal, and, on that basis, denies the allegations. Topcon denies
17 each and every remaining allegation contained in Paragraph 125.

18 126. Paragraph 126 states legal contentions to which no response is required. To the
19 extent a response is required, Topcon denies each and every allegation contained in Paragraph
20 126.

21 **F. Defendants' Glaucoma Module Does Not Infringe the '251 Patent**

22 127. Topcon admits that on May 15, 2018, U.S. Patent No. 9,968,251, titled Combined
23 Structure-Function Guided Progression Analysis, was issued. Topcon admits that a copy of the
24 '251 Patent is attached to the Third Amended Complaint as Exhibit 3. Topcon lacks sufficient
25 knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph
26 127, and, on that basis, denies the allegations.

27 128. Paragraph 128 states legal contentions to which no response is required. To the
28 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief

1 as to the truth of the allegations in Paragraph 128, and, on that basis, denies the allegations.

2 129. Topcon lacks sufficient knowledge or information to form a belief as to the truth
3 of the allegations in Paragraph 129, and, on that basis, denies the allegations.

4 130. Topcon admits that CZMI contacted Topcon by letter on December 20, 2019.
5 Topcon admits that a copy of the letter communication is attached as Exhibit 36. Except as
6 expressly admitted, Topcon lacks information or knowledge to form a belief as to the truth of the
7 remaining allegations in Paragraph 130.

8 131. Topcon denies that it makes, uses, sells, offers for sale, and/or imports into the
9 United States and this District its Glaucoma Module products.

10 132. Topcon denies each and every allegation contained in Paragraph 132.

11 133. Paragraph 133 states legal contentions to which no response is required. Also, the
12 Court granted Topcon's partial 12(b)(6) Motion to Dismiss the patent infringement cause of
13 action from CZMI's TAC without leave to amend. (Dkt. No. 260.) Accordingly, a response to
14 Paragraph 133 is not required. To the extent a response is required, Topcon denies each and every
15 allegation contained in Paragraph 133.

16 134. Topcon lacks sufficient knowledge or information to form a belief as to the truth
17 of the allegations in Paragraph 134, and, on that basis, denies the allegations.

18 135. Topcon lacks sufficient knowledge or information to form a belief as to the truth
19 of the allegations in Paragraph 135, and, on that basis, denies the allegations.

20 136. Topcon lacks sufficient knowledge or information to form a belief as to the truth
21 of the allegations in Paragraph 136, and, on that basis, denies the allegations.

22 137. Topcon lacks sufficient knowledge or information to form a belief as to the truth
23 of the allegations in Paragraph 137, and, on that basis, denies the allegations.

24 138. Paragraph 138 states legal contentions to which no response is required. To the
25 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
26 as to the truth of the allegations in Paragraph 138, and, on that basis, denies the allegations.

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G. Defendants' Did Not Tortuously Interfere with CZMI' Alleged Prospective Economic Advantage

139. Topcon admits that Mr. Hoffmeyer was a former employee of CZMI. Topcon denies that it is misappropriating OCT-related products from CZMI. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 139, and on that basis, denies the allegations.

140. Topcon admits that Ms. Fay was a former employee of CZMI. Topcon lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 140, and, on that basis, denies the allegations.

141. Topcon lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 141, and, on that basis, denies the allegations.

142. Paragraph 142 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation in Paragraph 142.

143. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 143, and, on that basis, denies the allegations.

144. Paragraph 144 states legal contentions to which no response is required. Topcon lacks sufficient information to form a belief as to the allegations asserted in Paragraph 144 because the allegations were filed under seal or relate to allegations that were filed under seal and Exhibit 37 that was filed under seal, and, on that basis, denies the allegations.

145. Paragraph 145 states legal contentions to which no response is required. Topcon lacks sufficient information to form a belief as to the allegations asserted in Paragraph 145 because the allegations were filed under seal or relate to allegations that were filed under seal and Exhibit 38 that was filed under seal, and, on that basis, denies the allegations.

146. Paragraph 146 states legal contentions to which no response is required. Topcon lacks sufficient information to form a belief as to the allegations asserted in Paragraph 146 because the allegations were filed under seal or relate to allegations that were filed under seal, and, on that basis, denies the allegations.

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1 147. Paragraph 147 states legal contentions to which no response is required. To the
2 extent a response is required, Topcon admits that it appeared at the November 2019 AAO
3 Conference in California and the International Meeting on OCT Angiography and Advances in
4 Imaging. Except as expressly admitted, Topcon lacks sufficient knowledge or information to
5 form a belief as to the truth of the remaining allegations in Paragraph 147, and, on that basis,
6 denies the allegations.

7 148. Paragraph 148 states legal contentions to which no response is required. To the
8 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
9 as to the truth of the allegations in Paragraph 148, and, on that basis, denies the allegations.

10 149. Topcon admits that Mr. Hoffmeyer accidentally sent an email to CZMI on or about
11 February 22, 2019. Topcon denies that any Topcon documents filed with the Third Amended
12 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
13 allegations, Topcon lacks sufficient information or knowledge to form a belief as to the remaining
14 allegations asserted in Paragraph 149 because the allegations relate to Exhibit 39 that was filed
15 under seal, and, on that basis, denies the allegations.

16 150. Topcon denies that it regularly discusses CZMI's ODx Products for purposes of
17 interfering with CZMI's contractual relationships. Topcon lacks sufficient knowledge or
18 information to form a belief as to the remaining allegations asserted in Paragraph 150 because the
19 allegations were filed under seal or relate to allegations that were filed under seal, and, on that
20 basis, denies the allegations.

21 151. Topcon denies that any Topcon documents filed with the Third Amended
22 Complaint evidence any misappropriation of CZMI trade secrets. As for the remaining
23 allegations, Topcon lacks sufficient information to form a belief as to the allegations asserted in
24 Paragraph 151 because the allegations were filed under seal or relate to allegations that were filed
25 under seal, and, on that basis, denies the allegations.

26 152. Topcon admits that TMS or THS employ Messrs. Brock, Chen, Guibord and
27 Ciccanesi. Unless expressly admitted, Topcon denies each and every allegation contained in
28 Paragraph 152.

1 **H. The Former Employees' Agreements**

2 153. Topcon lacks sufficient knowledge or information to form a belief as to the truth
3 of the allegations in Paragraph 153 because the allegations relate to Exhibits 11 through 18 there
4 were filed under seal, and, on that basis, denies the allegations.

5 154. Topcon admits that the Former Employees signed agreements related to their
6 employment with CZMI. Topcon lacks sufficient knowledge or information to form a belief as
7 to the truth of the remaining allegations in Paragraph 154 because the allegations relate to Exhibits
8 11 through 18 there were filed under seal, and, on that basis, denies the remaining allegations.

9 155. Paragraph 155 states legal contentions to which no response is required. To the
10 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
11 as to the truth of the allegations in Paragraph 155, and, on that basis, denies the allegations.

12 156. Paragraph 156 states legal contentions to which no response is required. To the
13 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
14 as to the truth of the allegations in Paragraph 156, and, on that basis, denies the allegations.

15 157. Paragraph 157 states legal contentions to which no response is required. Topcon
16 lacks sufficient information to form a belief as to the allegations asserted in Paragraph 157
17 because the allegations were filed under seal or relate to allegations that were filed under seal,
18 and, on that basis, denies the allegations.

19 158. Paragraph 158 states legal contentions to which no response is required. To the
20 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
21 as to the truth of the allegations in Paragraph 158, and, on that basis, denies the allegations.

22 159. Paragraph 159 states legal contentions to which no response is required. To the
23 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
24 as to the truth of the allegations in Paragraph 159, and, on that basis, denies the allegations.

25 160. Paragraph 160 states legal contentions to which no response is required. To the
26 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
27 as to the truth of the allegations in Paragraph 160, and, on that basis, denies the allegations.

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1 161. Topcon denies that Mr. Hoffmeyer has interfered with CZMI. The other
2 allegations of Paragraph 161 state legal contentions to which no response is required. To the
3 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
4 as to the truth of the remaining allegations in Paragraph 161, and, on that basis, denies the
5 remaining allegations.

6 162. Paragraph 162 states legal contentions to which no response is required. To the
7 extent a response is required, Topcon denies each and every allegation contained in Paragraph
8 162.

9 163. Paragraph 163 states legal contentions to which no response is required. To the
10 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
11 as to the truth of the allegations in Paragraph 163 because the allegations are based in part on
12 Exhibit 17 that was filed under seal, and, on that basis, denies the allegations.

13 164. Paragraph 164 states legal contentions to which no response is required. To the
14 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
15 as to the truth of the allegations in Paragraph 164 because the allegations are based in part on
16 Exhibit 17 that was filed under seal, and, on that basis, denies the allegations.

17 165. Paragraph 165 states legal contentions to which no response is required. To the
18 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
19 as to the truth of the allegations in Paragraph 165 because the allegations are based in part on
20 Exhibit 17 that was filed under seal, and, on that basis, denies the allegations.

21 166. Paragraph 166 states legal contentions to which no response is required. To the
22 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
23 as to the truth of the allegations in Paragraph 166 because the allegations are based in part on
24 Exhibit 17 that was filed under seal, and, on that basis, denies the allegations.

25 167. Paragraph 167 states legal contentions to which no response is required. To the
26 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
27 as to the truth of the allegations in Paragraph 167 because the allegations are based in part on
28 Exhibit 17 that was filed under seal, and, on that basis, denies the allegations.

1 **I. CZMI's Efforts to Thwart the Scheme**

2 168. Topcon admits that CZMI contacted Topcon and all of the Former Employees in
3 February and March 2019 to remind them of the alleged signed employment and/or
4 confidentiality agreements with CZMI and alleged ongoing confidentiality obligations. Except
5 as expressly admitted, Topcon denies each and every remaining allegation contained in Paragraph
6 168.

7 169. Topcon admits that on March 11, 2019, CZMI's outside counsel contacted the
8 President of Topcon Medical Systems to inform him of CZMI's concerns. Except as expressly
9 admitted, Topcon denies each and every remaining allegation contained in Paragraph 169.

10 170. Paragraph 170 states legal contentions to which no response is required. To the
11 extent a response is required, Topcon denies each and every remaining allegation contained in
12 Paragraph 170.

13 171. Topcon admits that CZMI contacted the Former Employees (except for Dr. Chen,
14 who left CZMI later) about their alleged contractual obligations and Mr. Hoffmeyer responded in
15 a letter. Topcon lacks sufficient knowledge or information to form a belief as to the truth of the
16 remaining allegations in Paragraph 171, and, on that basis, denies the allegations.

17 172. Topcon lacks sufficient knowledge or information to form a belief as to the truth
18 of the allegations in Paragraph 172, and, on that basis, denies the allegations.

19 **J. CZMI Will Not Be Harmed If Topcon Commercializes a Competing Product**

20 173. Paragraph 173 states legal contentions to which no response is required. To the
21 extent that a response is required, Topcon admits that CZMI is a well-known product
22 manufacturer in the ophthalmology industry and other industries. Topcon lacks sufficient
23 information or knowledge to form a belief as to the truth of the allegations in Paragraph 173
24 pertaining to whether CZMI has spent decades developing the technology in ODx. Topcon denies
25 each and every remaining allegation contained in Paragraph 173.

26 174. Topcon admits that the Former Employees signed agreements related to their
27 employment with CZMI. Topcon lacks sufficient information or knowledge to form a belief as
28 to the truth of the remaining allegations in Paragraph 174 because the allegations relate to Exhibits

12 through 19 that were filed under seal, and, on that basis, denies the allegations.

175. Paragraph 175 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 175 pertaining to whether CZMI goes to great lengths to protect its trade secrets and confidential information. Topcon denies each and every remaining allegation contained in Paragraph 175.

176. Paragraph 176 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 176.

FIRST CAUSE OF ACTION

Trade Secret Misappropriation Under the Federal Defend Trade Secrets Act (DTSA),

18 U.S.C. §§ 1836-1839 et seq.

(All Defendants)

177. Topcon repeats and incorporates herein its responses to Paragraphs 1 through 174 of this Answer.

178. Paragraph 178 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 178, and, on that basis, denies the allegations.

179. Paragraph 179 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 179, and, on that basis, denies the allegations.

180. Paragraph 180 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 180, and, on that basis, denies the allegations.

181. Paragraph 181 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 181.

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182. Paragraph 182 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 182.

183. Paragraph 183 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 183.

184. Paragraph 184 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 184.

SECOND CAUSE OF ACTION

Aiding and Abetting Trade Secret Misappropriation Under the Federal Defend Trade

Secrets Act (DTSA), 18 U.S.C. §§ 1836-1839 et seq.

(All Defendants)

185. Topcon repeats and incorporates herein its responses to Paragraphs 1 through 184 of this Answer.

186. Paragraph 186 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 186, and, on that basis, denies the allegations.

187. Paragraph 187 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 187, and, on that basis, denies the allegations.

188. Paragraph 188 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 188, and, on that basis, denies the allegations.

189. Paragraph 189 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 189.

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191. Paragraph 191 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 191.

192. Paragraph 192 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 192.

193. Paragraph 193 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 193.

**Trade Secret Misappropriation Under the California Uniform
Trade Secrets Act (CUTSA), Cal. Civ. Code § 3426, *et seq.*
(All Defendants)**

194. Topcon repeats and incorporates herein its responses to Paragraphs 1 through 193 of this Answer.

195. Paragraph 195 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 195, and, on that basis, denies the allegations.

196. Paragraph 196 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 196, and, on that basis, denies the allegations.

197. Paragraph 197 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 197, and, on that basis, denies the allegations.

29

199. Paragraph 199 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 199.

200. Paragraph 200 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 200.

201. Paragraph 201 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 201.

202. Paragraph 202 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 202.

203. Paragraph 203 states legal contentions to which no response is required. To the extent a response is required, Topcon denies each and every allegation contained in Paragraph 203.

Breach of Contract

(Against Tobias Kurzke, Greg Hoffmeyer, Genevieve Fay, Katalin Spencer, Terry Keith Brock, Charles Guibord, Jr., Joseph Ciccanesi, and Michael Chen)

204. Topcon repeats and incorporates herein its responses to Paragraphs 1 through 203 of this Answer.

205. Paragraph 205 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 205, and, on that basis, denies the allegations.

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1 206. Paragraph 206 states legal contentions to which no response is required. To the
2 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
3 as to the truth of the allegations in Paragraph 206, and, on that basis, denies the allegations.

4 207. Paragraph 207 states legal contentions to which no response is required. To the
5 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
6 as to the truth of the allegations in Paragraph 207, and, on that basis, denies the allegations.

7 208. Paragraph 208 states legal contentions to which no response is required. To the
8 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
9 as to the truth of the allegations in Paragraph 208, and, on that basis, denies the allegations.

10 209. Paragraph 209 states legal contentions to which no response is required. To the
11 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
12 as to the truth of the allegations in Paragraph 209, and, on that basis, denies the allegations.

13 210. Paragraph 210 states legal contentions to which no response is required. To the
14 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
15 as to the truth of the allegations in Paragraph 210, and, on that basis, denies the allegations.

16 211. Paragraph 211 states legal contentions to which no response is required. To the
17 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
18 as to the truth of the allegations in Paragraph 211, and, on that basis, denies the allegations.

19 212. Paragraph 212 states legal contentions to which no response is required. To the
20 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
21 as to the truth of the allegations in Paragraph 212, and, on that basis, denies the allegations.

22 213. Paragraph 213 states legal contentions to which no response is required. To the
23 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
24 as to the truth of the allegations in Paragraph 213, and, on that basis, denies the allegations.

25 214. Paragraph 214 states legal contentions to which no response is required. To the
26 extent a response is required, Topcon lacks sufficient knowledge or information to form a belief
27 as to the truth of the allegations in Paragraph 214, and, on that basis, denies the allegations.
28

1 **FIFTH CAUSE OF ACTION**

2 **Patent Infringement**

3 **(Topcon)**

4 215. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the patent
5 infringement cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.)
6 Accordingly, a response to Paragraph 215 is not required. To the extent a response is required,
7 Topcon incorporates by reference each response and denial to the allegations raised in the
8 foregoing paragraphs.

9 216. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the patent
10 infringement cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.)
11 Accordingly, a response to Paragraph 216 is not required. Also, Paragraph 216 states legal
12 contentions to which no response is required. To the extent a response is required, Topcon lacks
13 sufficient knowledge or information to form a belief about as to the truth of the allegations
14 asserted in Paragraph 216, and, on that basis, denies the allegations.

15 217. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the patent
16 infringement cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.)
17 Accordingly, a response to Paragraph 217 is not required. Also, Paragraph 217 states legal
18 contentions to which no response is required. To the extent a response is required, Topcon lacks
19 sufficient knowledge or information to form a belief about as to the truth of the allegations
20 asserted in Paragraph 217, and, on that basis, denies the allegations.

21 218. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the patent
22 infringement cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.)
23 Accordingly, a response to Paragraph 218 is not required. Also, Paragraph 218 states legal
24 contentions to which no response is required. To the extent a response is required, Topcon lacks
25 sufficient knowledge or information to form a belief about as to the truth of the allegations
26 asserted in Paragraph 218, and, on that basis, denies the allegations.

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SIXTH CAUSE OF ACTION

Tortious Interference with Prospective Economic Advantage
(Topcon, Tobias Kurkze, Greg Hoffmeyer, Genevieve Fay, Terry Keith Brock, Charles
Guibord, Jr., Joseph Ciccanesi and Michael Chen)

219. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious interference with prospective economic advantage cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 219 is not required. To the extent a response is required, Topcon incorporates by reference each response and denial to the allegations raised in the foregoing paragraphs.

220. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious interference with prospective economic advantage cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 220 is not required. Also, Paragraph 220 states legal contentions to which no response is required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief about as to the truth of the allegations asserted in Paragraph 220, and, on that basis, denies the allegations.

221. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious interference with prospective economic advantage cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 221 is not required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief about as to the truth of the allegations asserted in Paragraph 221, and, on that basis, denies the allegations.

222. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious interference with prospective economic advantage cause of action from CZMI's TAC without leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 222 is not required. To the extent a response is required, Topcon lacks sufficient knowledge or information to form a belief about as to the truth of the allegations asserted in Paragraph 222, and, on that basis, denies the allegations.

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1 223. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
2 interference with prospective economic advantage cause of action from CZMI's TAC without
3 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 223 is not required. To
4 the extent a response is required, Topcon lacks sufficient knowledge or information to form a
5 belief about as to the truth of the allegations asserted in Paragraph 223, and, on that basis, denies
6 the allegations.

7 224. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
8 interference with prospective economic advantage cause of action from CZMI's TAC without
9 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 224 is not required. Also,
10 Paragraph 224 states legal contentions to which no response is required. To the extent a response
11 is required, Topcon lacks sufficient knowledge or information to form a belief about as to the
12 truth of the allegations asserted in Paragraph 224, and, on that basis, denies the allegations.

13 225. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
14 interference with prospective economic advantage cause of action from CZMI's TAC without
15 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 225 is not required. Also,
16 Paragraph 225 states legal contentions to which no response is required. To the extent a response
17 is required, Topcon lacks sufficient knowledge or information to form a belief about as to the
18 truth of the allegations asserted in Paragraph 225, and, on that basis, denies the allegations.

19 226. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
20 interference with prospective economic advantage cause of action from CZMI's TAC without
21 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 226 is not required. Also,
22 Paragraph 226 states legal contentions to which no response is required. To the extent a response
23 is required, Topcon lacks sufficient knowledge or information to form a belief about as to the
24 truth of the allegations asserted in Paragraph 226, and, on that basis, denies the allegations.

25 227. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
26 interference with prospective economic advantage cause of action from CZMI's TAC without
27 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 227 is not required. Also,
28 Paragraph 227 states legal contentions to which no response is required. To the extent a response

1 is required, Topcon lacks sufficient knowledge or information to form a belief about as to the
 2 truth of the allegations asserted in Paragraph 227, and, on that basis, denies the allegations.

3 228. The Court granted Topcon's partial 12(b)(6) Motion to Dismiss the tortious
 4 interference with prospective economic advantage cause of action from CZMI's TAC without
 5 leave to amend. (Dkt. No. 260.) Accordingly, a response to Paragraph 228 is not required. Also,
 6 Paragraph 228 states legal contentions to which no response is required. To the extent a response
 7 is required, Topcon lacks sufficient knowledge or information to form a belief about as to the
 8 truth of the allegations asserted in Paragraph 228, and, on that basis, denies the allegations.

9 **PRAYER FOR RELIEF**

10 With respect to the Prayer for Relief and Paragraphs 229 to 237 of the TAC, Topcon
 11 denies that CZMI is entitled to any of the requested relief, or any other relief whatsoever in this
 12 action, including the relief set forth in the Prayer for Relief and its Paragraphs thereunder. As
 13 noted above, unless expressly admitted herein, each of the TAC's allegations as to Topcon is
 14 expressly denied. Topcon prays that the Court enter judgment in Topcon's favor and award it
 15 such other and further relief to which it may be entitled.

16 229. Answering Paragraph 229 of the TAC, Topcon denies that CZMI is entitled to
 17 judgment against Topcon on any and all causes of actions asserted against Topcon.

18 230. Answering Paragraph 230 of the TAC, Topcon denies that CZMI is entitled to any
 19 award of damages against Topcon, whether asserted in or based on any claim against Topcon or
 20 otherwise.

21 231. Answering Paragraph 231 of the TAC, Topcon denies that CZMI is entitled to a
 22 preliminary injunction or a final, permanent injunction or any other similar relief against Topcon
 23 for any period of time.

24 232. Answering Paragraph 232 of the TAC, Topcon denies that CZMI is entitled to a
 25 grant of punitive damages against Topcon, whether asserted in or based on any claim against
 26 Topcon or otherwise.

27 233. Answering Paragraph 233 of the TAC, Topcon denies that CZMI is entitled to a
 28 grant of restitution against Topcon, whether asserted in or based on any claim against Topcon or

1 otherwise.

2 234. Answering Paragraph 234 of the TAC, Topcon denies that CZMI is entitled to an
3 award of costs of suit against Topcon, whether asserted in or based on any claim against Topcon
4 or otherwise.

5 235. Answering Paragraph 235 of the TAC, Topcon denies that CZMI is entitled to an
6 award of pre-judgment interest against Topcon, whether asserted in or based on any claim against
7 Topcon or otherwise.

8 236. Answering Paragraph 236 of the TAC, Topcon denies that CZMI is entitled to an
9 award of attorneys' fees and costs of suit against Topcon, whether asserted in or based on any
10 claim against Topcon or otherwise.

11 237. Answering Paragraph 237 of the TAC, Topcon denies that CZMI is entitled to any
12 other relief against Topcon, whether asserted in or based on any claim against Topcon or
13 otherwise.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim)**

17 1. CZMI's claims fail because the TAC fails to state a claim upon which relief may
18 be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(No Trade Secrets / No Confidential or Proprietary Information / No Misappropriation)**

21 2. CZMI cannot demonstrate that any of CZMI's allegedly trade secret and/or
22 confidential and proprietary information noted in the TAC is a trade secret that derives economic
23 value from not being generally known, nor is a legitimate business interest, nor that all reasonably
24 necessary steps were taken to ensure that the secrecy of this supposedly confidential information
25 was maintained. In any event, Topcon did not misappropriate anything or aid and abet in the
26 misappropriation of anything.

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THIRD AFFIRMATIVE DEFENSE

(Fair Competition)

3. Topcon's actions of which CZMI now complains were, in fact, exercises of fair competition by Topcon. For that reason, among others, Topcon has no liability to CZMI, and this Court should abstain from granting any relief to CZMI.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

4. As to the causes of action allegedly set forth in the TAC, CZMI is barred from any recovery against Topcon by reason of CZMI's failure to make reasonable efforts to mitigate CZMI's damages, if any, as required by law. Alternatively, Topcon alleges that the damages otherwise recoverable by CZMI, if any, must be reduced by the amount of damages attributable to the failure of CZMI to make reasonable efforts to mitigate.

FIFTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional or Not Permitted by Statute)

5. Under the circumstances of this case, any award of punitive damages would violate the United States Constitution and/or the California Constitution. In any event, CZMI cannot demonstrate by clear and convincing evidence that Topcon acted with oppression, fraud, or malice.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

6. As to the causes of action allegedly set forth in the TAC, CZMI is estopped from asserting such causes of action against Topcon by reason of the actions and conduct of CZMI and/or CZMI's agents.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

7. As to the causes of action allegedly set forth in the TAC, CZMI is barred from asserting such causes of action against Topcon by the equitable doctrine of unclean hands on the part of CZMI and/or CZMI's agents.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

8. As to the causes of action allegedly set forth in the TAC, CZMI is barred from asserting such causes of action against Topcon by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

9. As to the causes of action allegedly set forth in the TAC, CZMI has waived its right, if any, to assert such causes of action against Topcon.

TENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

10. To the extent CZMI seeks to recover more than CZMI is entitled to recover in this case, if anything is due to CZMI at all, an award of the judgment sought by CZMI would unjustly enrich CZMI.

ELEVENTH AFFIRMATIVE DEFENSE

(No Equitable Relief)

11. CZMI's equitable claims for injunctive relief are bared because CZMI has not been irreparably harmed, money damages are adequate, and/or the damages sought by CZMI is inconsistent with an exercise of equitable relief.

TWELFTH AFFIRMATIVE DEFENSE

(License/Consent/Acquiescence)

12. CZMI cannot recover, in whole or in part, by license, consent, and/or acquiescence.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Attorneys' Fees)

13. CZMI fails to state facts and/or allege a claim on which attorneys' fees may be awarded.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Intent)

14. CZMI's TAC, and all causes of action attempted to be set forth therein, fails to state a claim for relief against Topcon because Topcon lacked the requisite intent to cause the alleged harm.

FIFTEENTH AFFIRMATIVE DEFENSE

(Superseding Cause)

15. The injuries and damages, if any, sustained by CZMI is the direct and proximate result of the acts, omissions, negligence, or other actionable conduct of CZMI, or persons or entities other than CZMI, which Topcon cannot and does not control, and such conduct is a contributing, intervening, and superseding cause of the damages and losses alleged.

SIXTEENTH AFFIRMATIVE DEFENSE

(Damages Not Caused by Topcon)

16. Topcon was not responsible for and did not cause or contribute to any alleged injury, damages, loss and/or detriment, if any, which was not the result of any act or other conduct of Topcon.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Damage to CZMI)

17. The TAC and the causes of action alleged stated therein are barred because CZMI has not suffered any actual damages whatsoever, nor any actual damages as a direct and proximate result of some conduct by Topcon.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Reservation of Additional Affirmative Defenses)

18. Topcon has not knowingly or voluntarily waived any applicable affirmative defenses and reserves the right to assert any rely on such other applicable affirmative defenses as may become available or apparent during discovery proceedings. Topcon further reserves the right to amend its Answer and/or Affirmative Defenses accordingly and/or to delete Affirmative Defenses that Topcon determines are not applicable during the course of subsequent discovery.

PRAYER

WHEREFORE, Topcon prays for judgment against CZMI as follows:

1. That CZMI take nothing by the TAC;
2. That the Court deny CZMI's demand for a preliminary and permanent injunction with prejudice;
3. That the Court dismiss CZMI's TAC against Topcon with prejudice;
4. That judgment be entered in favor of Topcon and against CZMI on all causes of action;
5. That Topcon be awarded reasonable attorneys' fees according to proof;
6. That Topcon be awarded the cost of suit herein incurred; and
7. That Topcon be awarded such other and further relief as the Court may deem appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Topcon hereby demands trial by jury of all causes of action that were not dismissed without leave to amend, claims or issues properly triable thereby.

Dated: September 4, 2020

Respectfully submitted,

FISHER & PHILLIPS LLP

By: /s/ Anthony M. Isola

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